

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
'D' BENCH, CHENNAI**

श्री महावीर सिंह, उपाध्यक्ष एवं श्री गिरीश अग्रवाल, लेखा सदस्य के समक्ष  
**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND  
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.:3068/CHNY/2017  
निर्धारण वर्ष /Assessment Year: 2013 - 2014

The Assistant Commissioner of  
Income Tax,  
Corporate Circle – 2,  
No.63-A, Race Course Road,  
Coimbatore – 641 018. T.N

(अपीलार्थी/Appellant)

M/s. Shanthi Gears Limited,  
No.304-A, Trichy Road,  
Singanallur,  
Coimbatore – 641 005.

Vs.

**PAN : AADCS 0692 L**  
(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by  
प्रत्यर्थी की ओर से/Respondent by

: Mr. G. Johnson, Addl. CIT  
: Mr. R. Vijayaraghavan, Advocate

सुनवाई की तारीख/Date of Hearing : 03.03.2022  
घोषणा की तारीख/Date of Pronouncement : 04.03.2022

**आदेश /O R D E R**

**PER MAHAVIR SINGH, VP:**

This appeal by the Revenue is arising out of the order of the learned Commissioner of Income Tax (Appeals)-1, Coimbatore in Appeal No.56/16-17; dated 05.10.2017. The Assessment was framed by the Deputy Commissioner of Income Tax, Corporate Circle – 2, Coimbatore for the Assessment Year 2013 – 2014 u/s.143(3) of the Income Tax Act, 1961 vide order dated 22.03.2016.

2. The only issue in this appeal of the Revenue is against the order of the Commissioner of Income Tax (Appeals) allowing the Assessee's claim of deduction made by filing a letter dated 17.09.2015 and not claimed in the original return of income. For this, the Revenue has raised the following effective grounds, as under:

"2. The learned Commissioner of Income Tax (Appeals)-I Coimbatore has erred in allowing the Assessee's appeal when the Assessee had not claimed deduction in the original return filed but made a fresh claim by filing a letter dated 17.09.2015 and the due procedure for filing of Form 10CCB was not followed.

3. The facts of the case, i.e. Precot Meridian Vs. ACIT, Company Circle - I(1), Coimbatore relied upon by the learned CIT(A) are different from that of the Assessee and not applicable to this case.

4. The facts of the case, i.e. M/s. NTPC Vs CIT [1996] 229 ITR 383 (SC) relied upon by the learned CIT(A) are different from that of the Assessee and not applicable to Assessee's case."

3. The brief facts are that the Assessee is deriving income from wind-mills and is also engaged in design manufacture, supply and servicing of gears and gear boxes. The Assessee filed his return of income for the Assessment Year 2013 - 2014 on 30.09.2013 within the due date u/s.139(1) of the Act

and during the assessment proceedings, the Assessee vide letter dated 17.09.2015 made a claim of deduction u/s.80IA of the Act in regard to profit derived from wind-mills along with necessary enclosures and audited report in Form No.10CCB dated 04.09.2015. The Assessing Officer disallowed the claim of deduction u/s.80IA of the Act by holding that the Assessee company failed to follow the due procedure in filing of Form No.10CCB electronically. The Assessing Officer stated that the provisions of Section 80AC of the Act is mandatory and therefore by not following the same, as the Assessee has made claim only in subsequent submissions during the assessment proceedings and not in the original return filed, the same is not allowable. Accordingly, the Assessing Officer has not considered the claim u/s.80IA of the Act by observing in paragraph no.5.3, as under:

“5.3. It is an admitted fact that the Assessee had not followed the due procedure while claiming the deduction u/s.80IA of the I.T. Act, 1961. From the Assessment Year 2013 – 2014 onwards, as per Section 80IA(7) of the Act, the Assessee who claimed deduction u/s.80IA of the Act should mandatorily file the return of income along with Form No.10CCB electronically, as per Rule 12(2) of the I.T. Rules, 1962 inserted with effect from 01.04.2013. Since, the Assessee

company failed to follow the due procedure in the matter of filing of Form No.10CCB electronically and the very fact that the Assessee company themselves having accepted the same, and also based on the above discussions, the claim of deduction u/s.80IA of the Act amounting to Rs.4,15,68,651 is not allowed to the Assessee."

4. Aggrieved, the Assessee came in appeal before the Commissioner of Income Tax (Appeals). The Commissioner of Income Tax (Appeals) after considering various submissions, allowed the claim of the Assessee by observing in paragraphs no.5.4 and 5.5, as under:

"5.4. Considering both the arguments, it is necessary to analyze the existing statutory provisions and the relevant decisions of the Courts. As per Section 80AC, the only mandatory requirement to become eligible for the claim of deduction is that the Assessee should file return of income as stipulated u/s.139(1) of the Act. The appellant company filed the return of income on 30.09.2013 which is within the due date. Hence, the appellant company is entitled to claim deduction u/s.80IA, if found eligible by the Assessing Officer.

5.5. The Hon'ble ITAT, Chennai Bench in the case of M/s. Precot Meridian Limited Vs. ACIT, Company Circle - I(1), Coimbatore (discussed supra) has considered a similar issue, wherein belated claim made before the Assessing Officer in the course of assessment proceedings. The Apex Court in the case of NTPC Vs. CIT [1996] 229 ITR 383 (SC) held that "the purpose of assessment proceedings before the Tax Authorities is to assess correctly the tax liability of an assessee in accordance with law." The Court has also considered the situation in which

a claim was made belatedly, while pronouncing its judgement. Respectfully following the principles laid down by the Apex Court and the decision of the ITAT, Chennai Bench on similar facts and circumstances and in the interest of justice, it is directed that the Assessing Officer should entertain the claim of deduction u/s.80IA after due verification of the genuineness.”

5. Aggrieved, the Revenue is now in appeal before the Tribunal. Before us, the learned senior Departmental Representative, Mr. G. Johnson argued that as per the plain reading of Section 80AC of the Act, any deduction claimed u/s.80IA of the Act should be made only by furnishing the return of income on or before the due date as specified u/s.139(1) of the Act. He explained that the Assessee has made this claim only in the subsequent submissions during the assessment proceedings and not in the original return of income. He also argued that the Assessing Officer on verification of Form No.10CCB also noted that the same has not been filed electronically and as per the requirement of Section 80IA (7) of the Act, the audit report is to be furnished electronically only. According to him, the Commissioner of Income Tax (Appeals) has wrongly relied upon the Co-ordinate Bench decision of Chennai in the case of ACIT,

Company Circle-I(2), Coimbatore Vs. M/s. Precot Meridian Limited, Coimbatore in ITA No.1214/Mds/2012 dated 29<sup>th</sup> April, 2013. Further, he stated that the Commissioner of Income Tax (Appeals) has wrongly relied upon in the case of National Thermal Power Company Limited Vs. Commissioner of Income Tax reported in [1998] 229 ITR 0383 (SC).

6. On the other hand, the learned Counsel for the Assessee however read out the relevant provision of Section 80AC of the Act and the relevant reads as under:

“80AC : Where in computing the total income of an Assessee of the previous year relevant to the Assessment Year commencing on the 1<sup>st</sup> day of April, 2006 or any subsequent assessment year, any deduction is admissible under section 80IA or section 80IAB or section 80IB or section 80IC (or section 80ID or section 80IE), no such deduction shall be allowed to him unless he furnishes a return of his income for such assessment year on or before the due date specified under sub-section (1) of section 139.”

The learned Counsel for the Assessee stated that the pre-condition of Section 80C of the Act is furnished on the return of income of the Assessee on or before the due date specified under sub-section 1 of Section 139 of the Act. The learned

Counsel for the Assessee relied upon the various decisions which are as under:

- [1] ACIT, Company Circle-I(2), Coimbatore Vs. M/s. Precot Meridian Limited, Coimbatore in ITA No.1214/Mds/2012 dated 29<sup>th</sup> April, 2013.
- [2] DCIT-5(2)(1), Mumbai Vs. M/s. JSW Infrastructure Limited, Mumbai in ITA No.3708 & 3709/Mum/2018 dated 08.11.2019.
- [3] DCIT 15(3) Vs. Kamdhenu Builders and Developers, Navi Mumbai in ITA No.7010/Mum/2010 dated 27.01.2016.
- [4] ACIT vs. Monarch Innovative Technologies Private Limited in ITA No.4815/Mum/2016 dated 12.02.2018.
- [5] National Thermal Power Company Limited Vs. Commissioner of Income Tax in Tax Ref. Case No.4 of 1988 dated 04.12.1996.
- [6] Commissioner of Income Tax Vs. Jayant Patel in Tax Case No.1742 of 1986 dated 21.09.1998.

7. The learned Counsel for the Assessee particularly referred to the decision of the Co-ordinate Bench of Mumbai Tribunal in the case of DCIT, Mumbai Vs. M/s. JSW Infrastructure Limited, Mumbai (supra), wherein exactly identical issue was considered and decided in favour of the Assessee, wherein the Tribunal vide paragraph no.9 as under:

"9. We have heard both the parties, perused the material available on record and gone through the orders of the authorities below along with case laws cited by both parties. We find that the learned CIT(A) has recorded categorical findings, in light of the provision of section 80AC and held that nowhere, in the section, it was provided that unless, the Assessee makes a claim in its return filed u/s.139(1), the said claim is allowable. We further observed that as per provision of section 80AC, it is mandatory for the Assessee to file return of income on or before the due date

specified u/s.139(1) to claim the benefit of any deduction provided u/s.80IA/80IB/80IC/80ID and 80IE, but nowhere in the said section, it was provided that unless, the Assessee makes claim for deduction in the return filed u/s.139(1), the said claim is allowable. We further noted that the learned CIT(A) recorded categorical finding, in the light of the decision of ITAT Chennai Bench, in the case of ACIT Vs. Precot Meridian Limited (supra), where it was held that, once original return is filed u/s.139(1) within due date specified under the Act, then any deduction claimed in the revised return filed within due date specified u/s.139(5) shall be allowed. We further, noted that the learned CIT(A) had also taken a support from the decision of ITAT, Mumbai Bench, in the case of Kamadhenu Builders & Developers Vs. Additional CIT, where it was observed that section 80A(5) only requires filing of return, but nowhere it suggest that claim should be made in the original return and not by way of original return, further when the original return of income was filed within the due date, then the revised return filed, thereafter before completion of assessment proceedings is to be considered by the Assessing Officer, because the Act has been given opportunity to the Assessee to file revised return u/s.139(4) for removal of any defect or any omissions in the original return and that if both the returns were filed within time limit prescribed under the law, then conditions prescribed u/s.80IB(1)) of the I.T.Act, 1961 are fulfilled. In this case, the Assessee has filed a return u/s.139(1) within due date specified date, but the claim for deduction u/s.80IA, in respect of second unit was not made, however a revised return was filed u/s.139(5) within due date specified under the Act and made additional claim for deduction, in respect of second unit. When original return was filed within due date specified u/s.139(1), then any revised return filed within the due date specified u/s.139(5) to rectify any mistakes or omissions or wrong statements made in the return already filed u/s.139(1), then the revised

return takes, the nature of the original return filed within due date specified u/s.139(1) and consequently, the Assessee fulfills the conditions prescribed u/s.80AC of the Act, in order to be eligible for deduction u/s.80IA of the I.T. Act, 1961. The learned CIT(A) after considering the relevant facts has rightly deleted the additions made by the Assessing Officer towards disallowances of deduction claimed u/s.80IA of the I.T.Act, 1961. We do not see any reasons to interfere in the order of the learned CIT(A) and hence, we are inclined to uphold the findings of the learned CIT(A) and reject the ground taken by the Revenue.”

8. We have heard the rival contentions and gone through the facts and circumstances of the case. We have noted that the provisions of Section 80IA(5) only requires filing of return of income but nowhere it states that the claim should be made in the original return and not by way of original return. Further, when the original return was filed within the due date, then the revised return filed, thereafter, before the completion of assessment proceedings, is to be considered by the Assessing Officer, because the Act has given an opportunity to the Assessee to file his return u/s.139(4) of the Act for the removal of defects or omission in the original return.

9. Here, in the present case, the Assessee has made a claim by filing a letter during the course of the Assessment proceedings and once the claim is made during the course of the assessment proceedings, the Assessing Officer has to consider the same and decide. We noted that there is no dispute as regards to merits of the claim of deduction u/s.80IA of the Act. Hence, we find not infirmity in the order of the Commissioner of Income Tax (Appeals) and the same affirmed.

10. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the court on 4<sup>th</sup> March, 2022 at Chennai.

**Sd/-**

(गिरीश अग्रवाल)

**(GIRISH AGRAWAL)**

लेखा सदस्य /ACCOUNTANT MEMBER

**Sd/-**

(महावीर सिंह)

**(MAHAVIR SINGH)**

उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,

दिनांक/Dated, the 4<sup>th</sup> March, 2022

IA, Sr. PS

आदेश की प्रतिलिपि ँ ग्रेषित/**Copy to:** 1. ँ पीलर्षी/Appellant  
2. प्रत्यर्षी/Respondent  
3. आयकर आयुक्त (ं पील)/CIT(A)  
4. आयकर आयुक्त/CIT  
5. विभागीय प्रतिनिधि/DR  
6. गार्ड फाईल/GF